

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 EA-10 IO-13 ISO-00 AID-05 CEA-01
CIAE-00 COME-00 FRB-03 INR-10 NEA-10 NSAE-00
ICA-11 OPIC-03 SP-02 TRSE-00 LAB-04 SIL-01
AGRE-00 OMB-01 SS-15 L-03 NSC-05 STR-07 HEW-04
CTME-00 PA-01 /130 W
-----099121 042001Z /75

R 041831Z AUG 78
FM AMEMBASSY BRUSSELS
TO SECSTATE WASHDC 8239
ALL EC CAPITALS
AMEMBASSY BERN
AMEMBASSY OTTAWA
AMEMBASSY TOKYO
USMISSION GENEVA

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USEEC

PARIS ALSO FOR USOECD

E.O.11652: N/A
TAGS: ETRD, EEC
SUBJECT: FLORENCE AGREEMENT PROTOCOL ANNEX E: ARTICLES
FOR THE HANDICAPPED

REF: STATE 187912

1. SUMMARY. MISSION IS FORWARDING A COPY OF PROPOSED EC
REGULATION REGARDING DUTY-FREE IMPORTS OF MATERIALS FOR
BLIND AND HANDICAPPED PERSONS. THIS REGULATION WOULD
PERMIT SUCH IMPORTS EVEN WHEN EQUIVALENT ARTICLES ARE BE-
ING MANUFACTURED IN THE EC AS LONG AS SUCH ADMISSION DOES
NOT "PREJUDICE" EC PRODUCTION BUT DOES NOT DEFINE HOW THIS
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IS TO BE DETERMINED. SOME DEFINITIONS ARE COVERED BY THE
PROPOSED REGULATION BUT MANY ARE LEFT TO MEMBER STATES OR
TO SUBSEQUENT IMPLEMENTING REGULATIONS BY THE COMMISSION.
END SUMMARY.

2. THE MISSION HAS OBTAINED ON A CONFIDENTIAL BASIS A
COPY OF THE COMMISSION'S PROPOSAL FOR A COUNCIL REGULA-

TION UNDER ARTICLE 28 OF THE EEC TREATY REGARDING THE DUTY-FREE IMPORT OF MATERIALS FOR THE BLIND AND FOR OTHER HANDICAPPED PERSONS. THIS PROPOSED REGULATION IS INTENDED TO BRING UNDER A SINGLE TEXT ALL MEASURES WITHIN THE EC ON DUTY-FREE ADMISSION FOR IMPORTS OF OBJECTS FOR THE BLIND AND THE PHYSICALLY OR MENTALLY HANDICAPPED. IN THE EXPLANATORY MEMORANDUM OF THE COMMUNICATION (COPY POUCHED TO EUR/RPE LAMANTIA) THE COMMISSION NOTES THAT ACCORDING TO POINT 14A OF TITLE VIII OF THE PROTOCOL TO THE FLORENCE AGREEMENT THE EUROPEAN COMMUNITY WILL BE A CONTRACTING PARTY TO THE PROTOCOL PROVIDED THAT ALL MEMBER STATES ARE ALSO PARTIES. THE OPINION OF THE EUROPEAN PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE ARE TO BE SOUGHT.

3. AS NOTED PARA 3 REFTEL, ACCORDING TO TITLE II, ARTICLE 3/1.B OF THE PROPOSED REGULATION, IT WOULD PERMIT DUTY-FREE ENTRY INTO THE EC OF MATERIALS FOR HANDICAPPED PERSONS EVEN IF EQUIVALENT ARTICLES ARE BEING MANUFACTURED IN THE COMMUNITY "PROVIDED THE GRANTING OF DUTY-FREE ADMISSION DOES NOT PREJUDICE THE PRODUCTION OF EQUIVALENT ARTICLES WITHIN THE COMMUNITY." HOW SUCH INJURY TO AN EC MANUFACTURER WILL BE DETERMINED IS NOT DEFINED IN THE PROPOSED REGULATION BUT WILL PROBABLY BE CONSIDERED IN THE "DETAILED RULES FOR THE PRACTICAL APPLICATION OF THESE MEASURES AT THE COMMUNITY LEVEL" TO BE ADOPTED BY THE COMMISSION AT A LATER DATE ONCE THE REGULATION IS APPROVED.

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4. ARTICLE 3/5, TITLE II OF THE PROPOSED REGULATION, ALSO PROVIDES FOR DUTY-FREE ADMISSION OF ARTICLES WITHOUT REGARD TO THE DOMESTIC MANUFACTURER OF EQUIVALENT ARTICLES IN THE COMMUNITY IF THESE ARTICLES ARE OBTAINED FROM OUTSIDE THE COMMUNITY AS "GIFTS" WHICH HAVE NOT "BEEN PROMPTED BY ANY COMMERCIAL CONSIDERATIONS ON THE PART OF THE DONOR."

5. BASED UPON THE PROPOSED REGULATION AND CONVERSATION WITH AN EC COMMISSION OFFICIAL, THE FOLLOWING RESPONSES ARE OFFERED TO THE QUESTIONS RAISED IN PARA 2 REFTEL:

A. "HANDICAPPED" PERSONS ARE NOT DEFINED IN THE REGULATION AND WILL PRESUMABLY BE COVERED ONLY BY LEGISLATION IN THE MEMBER STATES.

B. AND D. DUTY-FREE ENTRY IS PERMITTED FOR SPECIALLY DESIGNED MATERIALS FOR THE HANDICAPPED WHEN "THEY ARE INTENDED FOR INSTITUTIONS OR ORGANIZATIONS THAT ARE PRINCIPALLY ENGAGED IN THE EDUCATION AND SOCIAL ADVANCEMENT OF, OR THE PROVISION OF ASSISTANCE TO, HANDICAPPED

PERSONS AND ARE AUTHORIZED BY THE COMPETENT AUTHORITIES
OF THE MEMBER STATES TO RECEIVE SUCH ARTICLES DUTY FREE "
(TITLE II, ARTICLE 3/1.A). ACCORDING TO OUR COMMISSION
SOURCE, THE DEFINITION OF SUCH INSTITUTIONS OR ORGANIZA-
TIONS IS TO BE ESTABLISHED BY THE LEGISLATION AND REGULA-
TIONS IN THE MEMBER STATES WHICH ALSO COVER THEIR AUTHORI-
ZATION TO IMPORT MATERIALS FOR THE HANDICAPPED.

C. THE DETERMINATION OF "EQUIVALENCY" IS TO BE
DETERMINED, ACCORDING TO ARTICLE 3/3:

BEGIN TEXT. BY COMPARING THE CHARACTERISTICS AND
SPECIFICATIONS OF THE ARTICLE FOR WHICH DUTY-FREE AD-

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MISSION IS REQUESTED WITH THOSE OF THE CORRESPONDING ARTI-
CLE MANUFACTURED IN THE COMMUNITY TO DETERMINE WHETHER
THE LATTER COULD BE USED FOR THE SAME PURPOSES AS THOSE
FOR WHICH THE ARTICLE IN RESPECT OF WHICH DUTY-FREE AD-
MISSION IS REQUESTED IS INTENDED AND WHETHER ITS PERFORMANCE
WOULD BE COMPARABLE TO THAT EXPECTED OF THE LATTER;

AN ARTICLE SHALL BE REGARDED AS BEING MANUFAC-
TURED IN THE COMMUNITY WHERE ITS DELIVERY PERIOD FROM THE
TIME OF THE ORDER IS NOT, ACCOUNT BEING TAKEN OF COMMER-

CIAL PRACTICES IN THE MANUFACTURING SECTOR UNDER CONSIDER-
ATION, APPRECIABLY LONGER THAN THE DELIVERY PERIOD OF THE
ARTICLE FOR WHICH DUTY-FREE ADMISSION IS REQUESTED FOR
WHERE THIS PERIOD DOES NOT EXCEED THE LATTER TO SUCH AN
EXTENT THAT THE INTENDED PURPOSE OR USE FOR WHICH THE
ARTICLE WAS INITIALLY INTENDED WOULD BE APPRECIABLY AF-
FECTED THEREBY. END TEXT.

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E. WHILE THE REGULATION CONTAINS AN ANNEX DESCRIBING
MATERIALS FOR THE BLIND, IT DOES NOT INCLUDE AN EQUIVALENT
LIST OF ARTICLES FOR THE HANDICAPPED. HOWEVER, ACCORDING
TO OUR COMMISSION SOURCE, SUCH A LIST MAY HAVE BEEN PRE-
PARED FOR THE GUIDANCE OF "AUTHORIZED INSTITUTIONS AND
ORGANIZATIONS" AND MAY BE INCLUDED IN A SUBSEQUENT COM-
MISSION REGULATION OR IN MEMBER STATE LEGISLATION.

F. MATERIALS ARE TO BE PROVIDED TO THE BLIND OR HANDI-
CAPPED FREE OR AT COST. ACCORDING TO THE COMMON PROVISIONS
(TITLE III, ARTICLE 6/1), ARTICLES ADMITTED DUTY FREE UNDER
THIS REGULATION "MAY BE LENT, HIRED OUT, OR TRANSFERRED BY
THE BENEFICIARY INSTITUTIONS OR ORGANIZATIONS ON A NON-
PROFIT MAKING BASIS" TO THE BLIND OR HANDICAPPED. HOW-
EVER, IN ALL OTHER CASES (I.E., MAKING MATERIALS AVAILABLE
FOR COMMERCIAL GAIN), CUSTOMS DUTIES MUST BE PAID. THIS
WOULD BE DETERMINED PRIMARILY BY NATIONAL AUTHORITIES.
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